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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF MAY 1998

BEFORE

THE HON'BLE MR.JUSTICE S.R. BANNURMATH

L.R.R.P.No.951/1989

BETWEEN:

Sri Devarajaiah
S/o Kenchaiah, 55 yrs.
R/o Choranahalli
Varuna Hobli
Mysore Tq. & Dist. .... Petitioner.

(By Sri B.M. Chandrashekariah, Adv.)

AND:

1. Sri Kariyappa @ Kempanna
major, R/o Choranahalli
Grama (Choranabaligrama)
Mysore Tq. & Dist.

2. The Land Tribunal
Mysore Tq. and Dist.

3. The State of Karnataka
by its Secretary, Revenue
Dept. Vidhana Soudha
Bangalore-1. .... Respondents.

(By Sri B.T. Parthasarathy, Adv. for R1)

This LRRP is filed under Sec.121A of the Karnataka Land Reforms Act against the order dated 4.10.1988 on the file of the Land Reforms Appellate Authority, Mysore, allowing the appeal and setting aside the order passed by the Land Tribunal, Mysore, dated 2.6.1988, etc.

This LRRP coming on for Hearing this day, the Court made the following:

O R D E R

This is a revision petition filed by the unsuccessful landlord against the order dated 4-10-1988 passed by the Land Reforms Appellate Authority, Mysore, reversing the order dated 2-6-1988 passed by the Land Tribunal, Mysore in case No.KLRM.1706/74-75 and thereby granting occupancy rights to the 1st respondent.

The brief facts of the case are that the 1st respondent claiming to be the tenant of the land Sy.No.35/1 of Choranahalli village, Mysore Taluk, in so far as 38 guntas only out of 3 acres 33 guntas filed his application in form No.7 claiming occupancy rights before the Land Tribunal.

After following the procedure, the Land Tribunal by its order rejected the claim of the tenant against which an appeal was preferred by him before the Land Reforms Appellate Authority. The Land Reforms Appellate Authority though found that the Tribunal

has failed to comply with the mandatory requirement under Rule 17 of the Karnataka Land Reforms Rules, proceeded to hear the matter and even after finding that the lease agreement (Guttigekararu) relied upon by respondent No.1 is not proved granted occupancy rights to the 1st respondent only placing its reliance on the recital found in the mortgage deed dated 16-11-1973 said to have been executed by the petitioner in favour of the 1st respondent. The said recital reads thus:-

> " ಕೆಳಗೆ ಷೆಡ್ಯೂಲ್‌ನಲ್ಲಿ ನಮೂದು ಮಾಡಿರುವ ಆಸ್ತಿಯು
> ಸ್ವತ್ತು ನನಗೆ ಪಿತ್ರಾರ್ಜಿತವಾಗಿ ಬಂದು ಸೇರಿರುತ್ತದೆ
> ನಿಮ್ಮ ವ್ಯವಸಾಯದ ಸ್ವಾಧೀನ ನಿಮ್ಮಲ್ಲಿ
> ಇರುವ ಸ್ವತ್ತನ್ನು ಈ ದಿವಸ ನಿಮಗೆ
> ನಿಮ್ಮಿಂದ 2000 ರೂಪಾಯಿಗಳಿಗೆ ಆಧಾರ
> ಮಾಡಿರುತ್ತೇನೆ."

Interpreting the meaning of the words "ನಿಮ್ಮ ವ್ಯವಸಾಯದ ಸ್ವಾಧೀನ ನಿಮ್ಮಲ್ಲಿ ಇರುವ ಸ್ವತ್ತನ್ನು" the Appellate Authority has held that if the land was already in possession

of the 1st respondent it must be in the capacity of a tenant and as such as there is relationship of landlord and tenant,proceeded to grant occupancy.

The learned Counsel for the petitioner contended that this is misreading of evidence that the Appellate Authority in the initial stage found that the Tribunal has not followed the procedure as required under the Rules and ought to have remanded the case for fresh enquiry to give opportunity to both sides or should have scrutinised and read the entire mortgage deed along with the evidence which was available on record and the like statement of the parties and the revenue records to come to the conclusion as to whether respondent No.1 was a tenant or not. It is to be noted that the learned Counsel for the 1st respondent stated his inability to argue the case on the ground that the 1st respondent has taken away the entire papers from him in the year 1990 itself and as such though his name is shown

in the cause list, he has no more appearing for the 1st respondent and he is not in a position to argue the matter. He further prayed for time to verify as to whether the 1st respondent has taken steps to file vakalath or engaged any Counsel.

It is to be noted that this petition is of the year 1989. For the last nine years, if as stated by the learned Counsel for the 1st respondent, the respondent has taken away the briefs from the Counsel in the year 1990 and has not made any arrangement so far by filing the Vakalath, it shows he has no more interest to contest the case. As there is no diligence on the part of the 1st respondent, I do not see any ground to adjourn the matter at the hearing stage that too after a long lapse of nine years.

The 1st respondent has claimed the occupancy rights by the application dated 27-8-1974 stating that he is cultivating the portion of the land

now claimed for the last -14-years which is reflecting from 1960. Whereas in the evidence given by him before the Land Tribunal, he has stated that he is cultivating the land for the last five to six years prior to giving his evidence i.e., 1980 also. In order to establish that there was relationship of tenant and landlord between him and the petitioner, the 1st respondent has relied upon the lease deed which both the authorities namely, the Land Tribunal and the Land Reforms Appellate Authority have found not proved. If that is so, there was no other material placed before the Tribunal by the 1st respondent to establish his occupancy. The reliance placed by the Appellate Authority on the contents of the mortgage deed is without looking into the entire document as such. On persual of the entire document, it is seen that there was a mortgage transaction between the 1st respondent and the petitioner for a consideration of Rs.2,000/- out of which Rs.1,000/- was already taken before executing the deed.

In view of the findings by me above, it is seen that as there was no absolutely material placed before the Authorities by the 1st respondent to prove his tenancy. The only document relied upon by him by way of lease deed which has been found not proved by both the Authorities, the Appellate Authority simply relying upon an extract from the mortgage deed could not have held that the 1st respondent is the tenant of the land in question, that too in the absence of supporting or corroborating entries in the revenue records. As such, in my opinion, the Appellate Authority has committed illegality in granting the occupancy rights to the 1st respondent which has to be set aside.

In the result, the petition is allowed. The order dated 4-10-88 passed by the Land Reforms Appellate Authority, Mysore, is set aside and the order of the Land Tribunal,

Mysore, dated 2-6-1988 passed in case No. KLRM.1706/74-75 granting occupancy to the petitioner is upheld.

Sd/-
JUDGE

NSU/-